

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JESUS CHAVEZ FLORES,

Plaintiff,

v.

UNITED STATES IMMIGRATION  
AND CUSTOMS ENFORCEMENT,  
et al.,

Defendants.

CASE NO. 3:18-cv-05139-BHS-DWC

REPORT AND RECOMMENDATION

Noting Date: July 6, 2018

The District Court referred this action, filed pursuant to 42 U.S.C. § 1983, to United States Magistrate Judge David W. Christel. Before the Court is GEO Defendants' Amended Motion for Summary Judgment (Dkt. 26) and ICE Defendants' Motion to Dismiss (Dkt. 38).<sup>1</sup>

<sup>1</sup> Plaintiff names GEO Group, Inc. ("GEO"), Immigration and Customs Enforcement ("ICE"), and several of both organizations' employees as Defendants. Dkt. 1. ICE is a federal law enforcement agency within the Department of Homeland Security responsible for the criminal and civil enforcement of United States immigration law. *Id.*, p. 3. GEO is a contractor under ICE, providing facilities, management, personnel, and services to house detainees in ICE custody. *Id.*, p. 4.

1 After review of the motions, the Court recommends both the Motion for Summary Judgment and  
 2 Motion to Dismiss be denied as moot.

3 Plaintiff, represented by counsel, filed his initial Complaint on February 23, 2018. Dkt. 1.  
 4 GEO Defendants then filed their Motion and Amended Motion for Summary Judgment on  
 5 March 20, 2018, and March 21, 2018, respectively. Dkts. 21, 26. GEO Defendants argue that  
 6 they are not state actors for purposes of § 1983. Dkt. 26. Plaintiff filed an Amended Complaint  
 7 on April 9, 2018 (Dkt. 30), and ICE Defendants filed their Motion to Dismiss on April 30, 2018  
 8 (Dkt. 38). ICE Defendants argue the Court lacks jurisdiction over the action because Plaintiff has  
 9 failed to establish the federal defendants have waived their sovereign immunity. *Id.* On June 19,  
 10 2018, the Court granted Plaintiff's Motion for Leave to Amend (Dkt. 45) and Plaintiff filed a  
 11 Second Amended Complaint on June 20, 2018 (Dkt. 54). An amended complaint supersedes the  
 12 original complaint. *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). The original  
 13 complaint is "treated thereafter as non-existent." *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967)  
 14 *overruled on other grounds by Lacey v. Maricopa County*, 693 F.3d 896 (9th Cir. 2012). The  
 15 Motion for Summary Judgment attacks the original Complaint, and the Motion to Dismiss  
 16 attacks the Amended Complaint, both of which are now "non-existent." *See* Dkt. 19.

17 Accordingly, the undersigned recommends the Motion for Summary Judgment (Dkt. 26)  
 18 and Motion to Dismiss (Dkt. 38) be denied as moot, but all Defendants be allowed to re-file a  
 19 dispositive motion based on the allegations contained in the Second Amended Complaint. *See*  
 20 *Bacon v. Reyes*, 2013 WL 3893254 (D. Nev. July 26, 2013) (denying motion for summary  
 21 judgment as moot based on the filing of an amended complaint); *Nelson v. City of Los Angeles*,  
 22 2015 WL 1931714, \*22 (C.D. Cal. Apr. 28, 2015) (recommending summary judgment motions  
 23 be denied without prejudice to their reassertion after the plaintiff was given leave to amend  
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1 because the motions for summary judgment were based on the original complaint); *Farkas v.*  
2 *Gedney*, 2014 WL 5782788, \*3 (D. Nev. Nov.6, 2014) (“[B]ecause granting [plaintiff’s] motion  
3 for leave to amend will alter the scope of defendants’ now-filed motion for summary judgment,  
4 defendants’ motion for summary judgment is denied without prejudice, subject to re-filing based  
5 on the scope of the soon-to-be amended complaint.”).

6 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil  
7 Procedure, the parties shall have fourteen (14) days from service of this Report to file written  
8 objections. See also Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those  
9 objections for purposes of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985). Accommodating the time  
10 limit imposed by Rule 72(b), the clerk is directed to set the matter for consideration on July 6,  
11 2018, as noted in the caption.

12 Dated this 21st day of June, 2018.

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15 David W. Christel  
16 United States Magistrate Judge  
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